* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Crl. M.C. No. 7279/2006**

% Date of Decision: 12th , November, 2007

\# **SATYA CHIT FUNDS (P) LTD.** .....Petitioner

! Through Mr.Tanvir Ahmed Mir, Advocate

versus

$ **PRAKASH KHATTAR** ..... Respondent

^ Through None

WITH

\+ **Crl. M.C. No. 7285/2006**

\# **SATYA CHIT FUNDS (P) LTD.** .....Petitioner

! Through Mr.Tanvir Ahmed Mir, Advocate

versus

$ **PRAKASH KHATTAR** ..... Respondent

^ Through None

WITH

\+ **Crl. M.C. No. 7286/2006**

\# **SATYA CHIT FUNDS (P) LTD.** .....Petitioner

! Through Mr.Tanvir Ahmed Mir, Advocate

versus

$ **PRAKASH KHATTAR** ..... Respondent

^ Through None

AND

+ **Crl. M.C. No. 7287/2006**

SATYA CHIT FUNDS (P) LTD. .....Petitioner

! Through Mr.Tanvir Ahmed Mir, Advocate

versus

$ **PRAKASH KHATTAR** ..... Respondent

^ Through None

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(Yes)

2. To be referred to the Reporter or not?(Yes)

3. Whether the judgment should be reported in the digest?(Yes)

JUDGMENT

P.K.BHASIN, J:

The petitioner has invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 for impugning the common order dated 19.09.2006 passed by learned Metropolitan Magistrate in respect of four complaints filed by the petitioner-complainant under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') against the respondent herein whereby all the four complaints were disposed of as having been compounded. Since the order under challenge is same one in all these petitions and the point involved is also common the same were heard together and now I shall also be disposing of the four petitions by a common order.

2. Factual matrix necessary for the disposal of the present petitions is that the petitioner complainant is engaged in the business of Chit Funds. Respondent became member of some Chit Groups and towards discharge of his liability in respect of those Chits he issued several cheques of the total value of Rs. 2,03,500/- in favour of the petitioner but on presentment to his bank all the cheques were dishonoured. Feeling aggrieved the petitioner filed four complaints under Section 138 of the Act. The respondent on being summoned by the trial Court entered appearance and contested the complaints which were in due course clubbed together.

3. During the pendency of the complaints, the respondent, however, showed his inclination to settle the matter with the petitioner-complainant by moving an application on 25-04-2006. It has been averred in these petitions that the

respondent had agreed outside the Court to pay Rs. 1,50,000/- towards full and final settlement of the amounts involved in all the four cases and also paid Rs. 60,000/- to the petitioner as part payment and so the case was adjourned to 19-09-2006. However on that date of hearing when complainant intimated the Court about the aforesaid settlement the respondent backed out and claimed that the settlement was for Rs. 1,00,000/- in all and that he was willing to pay the balance amount of Rs. 40,000/-. The learned Metropolitan Magistrate then directed the complainant to return the amount of Rs. 60,000/- to the respondent which he declined upon which the trial Court passed the impugned common order disposing of the four complaints as having been compounded relying upon a judgment of this Court reported as **2004 (1) JCC (N.I.) 44**.

4. Aggrieved by the said order dated 19.06.2006, the petitioner has filed these four petitions alleging therein that since there was no consensus between the parties in respect of the terms of the settlement and which was not even got recorded in Court or otherwise reduced into writing outside the Court, the trial Court was not justified in treating the cases as compounded and that reliance on the judgment of this Court in **2004 (1) JCC (NI) 44** was placed erroneously.

5. Notice of these petitions was issued to the respondent who, however, did not enter appearance despite having been served with the notice. So, I heard the counsel for the petitioner only.

6. After hearing the learned counsel for the petitioner I have unhesitatingly

come to the conclusion that the impugned order is liable to be set aside. From the averments made in these petitions and also from a perusal of the impugned order it becomes apparent that there was no consensus between the parties as to the amount which the respondent had agreed to pay to the complainant as a result of the alleged compromise. The so-called understanding between the parties was not arrived at before the Court nor was it reduced into writing. So, the learned trial Court could not have taken note of any compromise and also could not have asked the complainant to return the money received by it as part payment of the total agreed amount which according to it was Rs. 1,50,000/-. Apart from this, the impugned order is liable to be set aside also for the reason that the offence under Section 138 of the Act has not been made compoundable under the Act. Hon'ble Supreme Court in a judgment reported as **AIR 1973 SC 84** had held that if under any Special Act an offence under that Act is not made compoundable the same cannot be compounded with or without the permission of the Court. In that case the accused had agreed to sell two flats to the complainant of that case. It was alleged that inspite of having received Rs. 28,000/- from the complainant the possession of the flats was not delivered to him by the accused. The complainant then filed a complaint against the accused under Section 420 of the Indian Penal Code and Section 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. During the pendency of that complaint the parties entered into an agreement by way of which

the accused undertook to do certain things within a certain period. Pursuant to the said agreement the case was compounded and the accused was acquitted by the Trial Court. However, after the acquittal the accused did not perform his part under the compromise agreement and the undertaking given to the trial Court. The trial Court then made a reference to the High Court for initiating contempt proceedings against the accused. The High Court, however, did not initiate contempt proceedings but instead reversed the order of the trial Court whereby the accused was acquitted and directed the trial Court to proceed with the trial. When the accused approached the Hon'ble Supreme Court against the said decision of the High Court his appeal was dismissed by observing that the offence under Section 13 of the Maharashtra Act was not compoundable either with or without the permission of the Court and, therefore, the trial Court was not right in acquitting the accused on the basis of compromise between the complainant and the accused. This legal position appears to have not been noticed by the learned trial Court in the present case while disposing of the four complaints.

7. In view of the foregoing, I allow these petitions and restore the four complaints and the trial Court is directed to proceed further in the cases from the stage at which they stood at the time of passing of the impugned order. The complaints shall now be taken up by the trial Court on 30th November, 2007 and the parties would be sent a notice of the said date by the trial Court for their appearance.

P.K.BHASIN,J

November 12, 2007
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